

GREENFIELD TOWN COUNCIL

Regular Meeting Minutes

December 9, 2009

GCTV-15

7:00 pm

**CALL TO ORDER:** Meeting was called to order at 7:00 p.m. by President Farrell.

**ROLL CALL OF MEMBERS:** Roll Call was taken. Councilor Canteen was absent.

**ALSO PRESENT:** Mayor William Martin; Director of Municipal Finance and Administration Marjorie L. Kelly; Town Clerk Maureen Winseck; Department of Public Works Superintendant Sandra Shields; Director of the Renewable Energy Division, Executive Office of Energy and Environmental Affairs, Department of Energy Resources, Dwayne Breger; Council on Aging Director Hope Macary; Youth Center Director Bryan Smith; Fire Department Deputy Chief Robert Strahan; Police Chief Executive Assistant Christine Scott; GCTV-15 staff; WHAI/WPVQ Jeff Tirrell; *the* Recorder Anita Phillips; and approximately 40 members of the public.

President Farrell confirmed there would be no public comments until the Public Forum portion of the agenda.

**PUBLIC HEARINGS:** None.

**COMMUNICATIONS:**

**MAYOR:** Mayor Martin read the attached memo dated December 9, 2009 titled "Revisiting the FY2010 Budget" which would be discussed in the future.

**SCHOOL COMMITTEE CHAIRMAN:**

**TOWN OFFICERS:** None.

Mr. Breger reviewed the letter attached from the Department of Energy Resources (DOER) dated December 3, 2009. He explained the suspension of review of applications for qualifying Biomass Electric Energy Projects. He noted the Renewable Portfolio Standard (RPS) were to be reviewed. The announcement was not intended to suggest there would be a permanent suspension of Biomass projects. There was an ambitious six (6) month review process with expected results available around May 2010 to DOER. Mr. Breger responded to questions from the Councilors.

**MOTIONS, ORDERS, AND RESOLUTIONS**

**Order no. FY 10 -041**

**MOTION:** On a motion by Councilor Singer, second by Councilor Allis, it was,

**MOVED:** THAT IT BE ORDERED THAT THE GREENFIELD TOWN COUNCIL AMENDS THE CODE OF THE TOWN OF GREENFIELD, CHAPTER 650, SECTIONS 49 THROUGH SECTION 64 BY INSERTING THE FOLLOWING LANGUAGE AND RENUMBERING EXISTING SECTIONS ACCORDINGLY:

SECTION 650-49(A) – ADD (11) SUPPLY OF WASTE WATER UNDER A CONTRACT ENTERED INTO PURSUANT TO SECTION 650-55. SUPPLY OF WASTE WATER.

ADD SECTION 650-55. SUPPLY OF WASTE WATER – THE MAYOR, WITH THE PRIOR APPROVAL OF THE TOWN COUNCIL, MAY ENTER INTO A CONTRACT FOR THE SUPPLY OF TREATED WASTE WATER, THE DURATION OF WHICH SHALL NOT EXCEED TWENTY (20) YEARS. THE PERSONAL ENTITY RECEIVING SUPPLY OF SUCH WASTE WATER SHALL OBTAIN AT ITS SOLE COST, ALL NECESSARY PERMITS FROM LOCAL, STATE AND FEDERAL AUTHORITIES. SAID CONTRACT SHALL SET FORTH THE PRICE FOR SUPPLY OF SUCH WASTE WATER AND ALL OTHER TERMS AND CONDITIONS RELATED TO SUCH SUPPLY. THE PRICE FOR SUCH WASTE WATER MAY INCLUDE ALL OR A PORTION OF SEWER USE FEES THAT MAY HAVE BEEN CHARGED ON THE RETURN OF WASTE WATER TO THE SEWER IN LIEU OF SEPARATE CHARGE FOR SUCH SEWER USE. AND FURTHER AMENDS THE TABLE AND INDEX OF CONTENTS OF THE CODE.

**DISCUSSION:** Councilor Singer stated the Appointment and Ordinance Committee forwarded a majority positive recommendation to approve the proposed amendment. Councilor Allis stated this was a good idea to have in the regulations in the event an entity, such as a golf course, wanted to buy wastewater for watering purposes. President Farrell discussed a study by Argon National Laboratory regarding the use of reclaimed water by Power Plants and other reclaimed uses as a valuable resource. He further noted this was not a vote needed by the Town Council because it was a DPW Regulation and the Council doesn't not approve regulations. Councilors Guin and McLellan would vote in favor of this order. Councilor Siano would not vote in favor of this order. He suggested selling potable water to whoever would like to purchase it.

**MOTION:** On a motion by Councilor Singer, second by Councilor Joseph, it was,

**MOVED:** TO AMEND THE PROPOSED REGULATIONS TO READ AS FOLLOWS: (proposed language underlined)

**§ 650-55. Supply of Wastewater.**

The Mayor, with the prior approval of the Town Council, may enter into a contract for the supply of treated or untreated wastewater, the duration of which shall not exceed twenty (20) years. The Town Council shall include in any decision the health and safety of the community. The person or entity receiving supply of such wastewater shall obtain, at its sole cost, all necessary permits from local, state and federal authorities. Said contract shall set forth the price for supply of such wastewater and all other terms and conditions related to such supply. The price for sale of such wastewater may include all or a portion of sewer use fees that may have been charged on the return of wastewater to the sewer in lieu of separate charges for such sewer use.

**DISCUSSION:** President Farrell, Councilors Allis, and Guin would vote in favor of this amendment.

It was by show of hands, unanimously,

**VOTED:** TO APPROVE THE AMENDMENT.

**MOTION:** On a motion by Councilor Singer, second by Councilor Joseph, it was,

**MOVED:** TO AMEND THE PROPOSED REGULATIONS TO READ AS FOLLOWS: (proposed language underlined)

The Mayor, with the prior approval of the Town Council, may enter into a contract for the supply of treated or untreated wastewater, the duration of which shall not exceed twenty (20) years. The Town Council shall include in any decision the health and safety of the community. The person or entity receiving supply of such wastewater shall obtain, at its sole cost, all necessary permits from local, state and federal authorities. Said contract shall set forth the price for supply of such wastewater and all other terms and conditions related to such supply. The price for sale of such wastewater may include all or a portion of sewer use fees that may have been charged on the return of wastewater to the sewer in lieu of separate charges for such sewer use. That the Mayor submits the contract to the Town Council 30 days prior to the Town Council meeting for approval. Effective date December 10, 2009.

**DISCUSSION:** President Farrell requested a friendly amendment changing 30 days to 45 days. Councilor Singer accepted the friendly amendment. It was noted the amendment would not have any bearing on the issues before the Council this evening. President Farrell noted an effective date could be added to the amendment if the Council chose this. Councilor Singer suggested a friendly amendment to add "Effective date December 10, 2009" to the end of the paragraph. Councilor Wood suggested the amendment be reviewed further by committee and considered at a later date.

Councilors Singer and Letourneau withdrew the motion and second respectively.

President Farrell instructed the Appointments and Ordinance Committee to create an ordinance to require the Mayor to forward all contracts which need Town Council approval to the Council 45 prior to council consideration.

**MOTION:** On a motion by Councilor Siano, second by Councilor Singer, it was,

**MOVED:** TO AMEND THE PROPOSED REGULATIONS TO READ AS FOLLOWS: (proposed language underlined)

The Mayor, with the prior approval of the Town Council, may enter into a contract for the supply of treated or untreated wastewater, the duration of which shall not exceed twenty (20) years. The Town Council shall include in any decision the health and safety of the community. The person or entity receiving supply of such wastewater shall obtain, at its sole cost, all necessary permits from local, state and federal authorities. Said contract shall set forth the price for supply of such wastewater and all other terms and conditions related to such supply. The price for sale of such wastewater ~~shall may~~ include all ~~or a portion of~~ sewer use fees that are related to such supply. The price for sale of such waste water shall include all sewer use fees that may have been charged on the return of wastewater to the sewer in lieu of separate charges for such sewer use.

**DISCUSSION:** President Farrell explained the language was phrased in the proposed manner to profit the community. Ms. Shields stated the word "may" give the option to the Town to structure the funds to the benefit of the community. Councilor Allis would vote in opposition to the proposed amendment.

It was by show of hands, majority,

**DEFEATED:** TO APPROVE THE AMENDMENT.

It was by majority,

**VOTE:** TO APPROVE THE AMENDED SEWER REGULATIONS AS WRITTEN BELOW, ORDER NO. FY 10 -041.

Strike draft of Sewer Regulations.

**Bold text indicates additional language** ~~stricken~~ language is to be deleted.

**ARTICLE VIII, Charges, and Billing Procedures AND SALE OF WASTEWATER**

§ 650-49. Connection and maintenance fees and services.

A. Annually the Board of Public Works shall review and establish fees for the following:

- (1) New sewer service.
- (2) Repair of sewer service.
- (3) Replacement of sewer service.
- (4) Sewer services without operable access points.
- (5) Routine service cleanings.
- (6) Freeing a blocked service.
- (7) Freeing a blocked public main.
- (8) Inspection for leaks.
- (9) All overtime work.
- (10) Miscellaneous service calls.
- (11) Supply of wastewater under a contract entered into pursuant to Section 650-55. Supply of Wastewater, of this Article.**

B. The fees for the above will be set forth in the "Policy on Water and Sewer Service and User Fees."

§ 650-50. Annual Sewer Use Charges.

In addition to the charges listed in § 650-49 of this article, an annual fee shall be charged to every user of the municipal sewage works. The fee so charged shall be established by the Board of Public Works and shall be such as to produce revenues commensurate with the estimated annual cost of operating and maintaining all wastewater collection and treatment works. Each user fee so charged shall be calculated so as to reflect that the user's fair share of the operating costs based on the volume of the wastewater flows as determined by the Board of Public Works. The fee shall be reviewed annually and set forth in the "Policy on Water and Sewer Service and User Fees."

§ 650-51. Surcharges.

All dischargers of wastes of unusual character or strength may be subjected to a surcharge in addition to any other sewer charges. The amount of the surcharge shall reflect the additional cost incurred by the Town in repair, maintenance, and operation of the sewage works for the transport, treatment, and disposal of such wastes.

§ 650-52. Septage.

The Town will receive septage at the Water Pollution Control Plant as set forth in Article IV, § 650-31. The fee for disposal of this waste shall be reviewed annually and set forth in the "Policy on Water and Sewer Service and User Fees."

§ 650-53. Billing periods.

Annual sewer use fees shall be billed semiannually. Surcharges shall be billed monthly unless otherwise determined by the Superintendent.

§ 650-54. Payment.

All charges shall be payable at the Office of the Town Treasurer.

650-55. Supply Of Waste Water

The Mayor, with the prior approval of the Town Council, may enter into a contract for the supply of treated waste water, the duration of which shall not exceed twenty (20) years. The Town Council shall include in any decision the health and safety of the community. The personal entity receiving supply of such waste water shall obtain at its sole cost, all necessary permits from local, state and federal authorities. Said contract shall set forth the price for supply of such waste water and all other terms and conditions related to such supply. The price for such waste water may include all or a portion of sewer use fees that may have been charged on the return of waste water to the sewer in lieu of separate charge for such sewer use.

**Order no. FY 10 -044**

**MOTION:** On a motion by Councilor Guin, second by Councilor McLellan, it was,

**MOVED:** THAT IT BE ORDERED THAT THE GREENFIELD TOWN COUNCIL APPROVES A CONTRACT TO PIONEER RENEWABLE ENERGY, LLC FOR A PERIOD OF TWENTY (20) YEARS UNDER THE TERMS AND CONDITIONS AS WRITTEN IN THE PROPOSED WASTEWATER SUPPLY AGREEMENT AS AMENDED ATTACHED HERETO AS EXHIBIT A AND AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

**DISCUSSION:** Chairmen Guin and Maloney stated the Economic Development Committee and Ways and Means Committee forward positive recommendations to the Town Council for the contract. Councilor Guin stated the contract was reviewed independently and the vote was not for or against the Biomass project. President Farrell reviewed the changes to the wastewater agreement from Councilors after discussion and Public Hearing. Councilor Singer suggested this issue should be tabled until such a time when there was more definitive information on effects of a Biomass Plant. Councilors Letourneau and Siano were in favor if voting at a later date when more information was available.

**MOTION:** On a motion by Councilor Siano, second by Councilor Singer, it was majority,

**DEFEATED:** TO TABLE ORDER NO. FY 10 -044.

**DISCUSSION:** Councilor Sutphin questioned if the town should enter into a contract for any reason when there were studies being performed as to the prospect of the service. Councilor Sullivan did not believe it would be harmful for the Town to wait to enter into this contract. In response to a question by Councilor Guin, President Farrell explained once State regulations were determined for Biomass Plants, those regulations would govern. Councilor Joseph reminded Councilors the State study would determine if a Biomass Plant was eligible for energy credits, not whether it was "good or bad." Councilor Letourneau would not support the contracts before the Council tonight. President Farrell emphasized there were still local and state hurdles in the court system to overcome for a Biomass Plant. The Town Council was here to give the Mayor authority to sell wastewater and approve contracts, not approve a Biomass Plant. He would vote in favor of the contracts tonight. Councilor Singer suggested two amendments to the Wastewater Supply Agreement **1.)** In Article II A. 4. change "Class A Reclaimed Water" to "Drinking Water", and **2.)** In Article II A. 4. add the following sentence to the end of the paragraph from Article XIII E "The City shall have the right, of not less than thirty (30) days prior written notice, to suspend its performance under this agreement". The difference between Class A and Drinking Water and the Regulations for each was discussed. It was noted the Town did not currently test its drinking water to tell if there were pharmaceuticals remaining. Currently, the water discharged into the Green River was "Grade B" water. The water returned from the plant would come back through the sewer lines and treated. If there was an unexpected problem with the water, Madeira would be required to install a system to correct the issue. The water returned from the plant to the town would be monitored on a regular basis specified in the discharge permit given to the plant. Councilor Siano suggested this issue was not solely about financing but about the health of people; the cost of the loss to property values; the reduction in trees; and environmental impacts. He noted until further proof was given, this was safe and healthy. He would not vote in favor of the issue.

**MOTION:** On a motion by Councilor Singer, second by Councilor Letourneau, it was,

**MOVED:** TO DELETE IN ARTICLE II A. 4. "CLASS A RECLAIMED WATER STANDARDS (314 CMR 20)" AND REPLACE IT WITH "DRINKING WATER STANDARDS AND THE APPLICABLE CMR SECTION".

**DISCUSSION:** President Farrell suggested if amendments to the contract were to be made, the Council should table the issue because the Town Council doesn't have the authority to enter into contracts with anyone. Mayor Martin was not comfortable with the Council making changes to the contract. He noted the Town Attorney had approved the contract and any changes which would drastically change the contract would not have been approved by the Town Attorney. He preferred the Council either vote the existing contract up or down. Councilor Allis would vote in opposition of the amendment.

It was by majority,

**DEFEATED:** TO TABLE ORDER NO. FY 10 -044.

**MOTION:** On a motion by Councilor Singer, second by Councilor Maloney, it was,

**MOVED:** TO ADD THE FOLLOWING LANGUAGE AT THE END OF ARTICLE II A. 4. "IF AT ANYTIME DURING THIS AGREEMENT, PIONEER VIOLATES THIS PROVISION, THE CITY SHALL HAVE THE RIGHT, OF NOT LESS THAN 30 DAYS PRIOR, WITH NOTICE, TO SUSPEND ITS PERFORMANCE UNDER THIS AGREEMENT".

**DISCUSSION:** Councilor Singer stated this would give local control over health and safety. Mr. Wolfe and Councilor Singer clarified this amendment was in regards to treating the water. Councilor Maloney would vote in favor of this amendment.

It was by show of hands majority

**VOTED:** TO ADD THE FOLLOWING LANGUAGE AT THE END OF ARTICLE II A. 4. "IF AT ANYTIME DURING THIS AGREEMENT, PIONEER VIOLATES THIS PROVISION, THE CITY SHALL HAVE THE RIGHT, OF NOT LESS THAN 30 DAYS PRIOR, WITH NOTICE, TO SUSPEND ITS PERFORMANCE UNDER THIS AGREEMENT".

**MOTION:** On a motion by Councilor Letourneau, second by Councilor Siano, it was by majority show of hands,

**DEFEATED:** TO TABLE ORDER NO FY 10-044.

Councilor Maloney stated these motions authorized the Mayor to enter into contracts and does not approve or disapprove a Biomass Plant. Councilor Siano noted by approving the authorization for the Mayor to enter into these contracts, the Town Council was in effect supporting Biomass. Until the State makes its recommendations, he could not support these contracts. Councilor Letourneau would vote in opposition of the proposed agreements. Councilor Guin noted this was only one option for Pioneer to cool the plant. Councilor Guin would vote in favor of the agreement.

It was by majority show of hands,

**VOTED:** TO APPROVE THE MOTION ORDER NO. FY 10 -044 AS AMENDED.

### **Wastewater Supply Agreement**

This Wastewater Supply Agreement ("Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2009 (the "Effective Date"), by and between the City of Greenfield, Massachusetts (the "City") and Pioneer Renewable Energy LLC, a Massachusetts limited liability company ("Pioneer") with offices at 89 Thorndike Street, Cambridge, MA.

WHEREAS, the City owns a wastewater treatment plant (the "Plant") designed for an average daily flow of 3.4 million gallons per day;

WHEREAS, Pioneer proposes to construct, own and operate a power generating facility in Greenfield, Massachusetts (the "Project");

WHEREAS, the City has proposed to sell and Pioneer has proposed to buy secondarily treated effluent from the Plant (the "Effluent", as further defined below) and other water for use in connection with the Project;

WHEREAS, the Massachusetts Department of Environmental Protection has issued regulations concerning the use of Reclaimed Water in 314 CMR 20 et seq.;

WHEREAS, the Effluent will be further treated by Pioneer before its use in the Project; and

NOW, THEREFORE, in consideration for the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

#### **ARTICLE I: DEFINITIONS**

For the purposes of this Agreement, the following terms are defined:

"Agreement" shall mean this Wastewater Supply Agreement.

"Development Period" shall mean the period between the Effective Date and the Testing Commencement Date.

"Effective Date" shall have the meaning given to it in the preamble to this Agreement.

"Effluent" shall mean the wastewater which has been secondarily treated by the City at the Plant and which meets standards set forth in the City's NPDES permit.

"Effluent Rate" shall mean the cost of Effluent sold to Pioneer by the City as determined in accordance with Article III, Paragraph A, as adjusted annually in accordance with Article III, Paragraph B.

"Force Majeure" shall mean an event beyond the reasonable control of and not attributable to the negligence or willful misconduct of the party affected that prevents or delays such party's performance of its obligations under this Agreement, including but not limited to the following: flood; earthquake; storm; drought; lightning; fire; explosion; war; riot; civil disturbance; strike; sabotage; or electrical outage; provided, however, that Force Majeure shall not include any equipment failure due to neglected maintenance or repair.

"Maximum Continuous Consumption Rate" means 688 gallons per minute (990,000 gallons per day).

"Non-Conforming Effluent" shall mean treated wastewater from the City's Plant which otherwise would be classified as Effluent but for its failure to meet total suspended solids (TSS) and biochemical oxygen demand (BOD) standards as set forth in the city's NPDES Permit. Conformance and non-conformance shall be based upon testing performed by the City in

the Plant's laboratory or by an appropriately certified independent laboratory and reported to Governmental Authorities under the requirements of the NPDES Permit.

"NPDES Permit" shall mean the National Pollutant Discharge Elimination System Permit issued to the City by the United States Environmental Protection Agency and the Commonwealth of Massachusetts for the regulation of discharge of Effluent to the Deerfield River (Permit Number MA 0101214)

"Operations Term" shall mean, initially, either the twenty (20) year period during the Term of this Agreement, plus any additional extension of the Term, in each case as determined pursuant to Article VI, Paragraph A.

"Operations Term Commencement Date" shall mean the first date of commercial operation of the Project, as identified in a written notice given by Pioneer to the City at least ten (10) days prior to the Operations Term Commencement Date.

"Pipeline" shall mean the approximately five (5) mile force main pipeline and ancillary equipment necessary to facilitate the transport of Effluent from the Point of Delivery to the Project. The Pipeline is to be based on a conceptual design set forth by SVE Associates of Greenfield in the March 2009 Environmental Notification Form submitted to the Massachusetts Office of Energy and Environmental Affairs.

"Pipeline Premises" shall mean the real property on, under or over which Pipeline is to be constructed, the approximate location of which is indicated on Exhibit A. The Pipeline is to be based on a conceptual design set forth by SVE Associates of Greenfield in the March 2009 Environmental Notification Form submitted to the Massachusetts Office of Energy and Environmental Affairs. The actual Pipeline Premises shall be identified in the final design of the Pipeline and approved by the City.

"Plant" shall mean the wastewater treatment plant facilities owned by the City and located at 384 Deerfield St Greenfield, Massachusetts.

"Point of Delivery" shall mean the point where the Plant is physically connected to the Pumps, which location shall be within the Pump Area.

"Potable Water" shall mean water from the City's municipal water supply.

"Project" shall mean the Pioneer power generating facility to be constructed, owned and operated by Pioneer within the City on Butternut Road, Greenfield, Massachusetts.

"Pumps" shall mean all facilities and equipment located within the Pump Area, including but not limited to pumps, motors, meters, and appropriate interconnections that are reasonable and necessary to facilitate the transport of Effluent from the Plant to the Point of Delivery. The Pumps are to be based upon a conceptual design by AECOM Water, formerly Metcalf & Eddy.

"Pump Area" shall mean such real property, ownership or rights to which may be secured by Pioneer for its construction, ownership, operation, access to and from and maintenance of the Pumps.

"Reclaimed Water Permit" shall mean the permit for the use of Reclaimed Water by the Project required under the Reclaimed Water Regulations.

"Reclaimed Water Regulations" shall mean the regulations of the Massachusetts Department of Environmental Protection 314 CMR Section 20 et seq.

"Standards" shall mean the quality and quantity standards applicable to Effluent as set forth in Article II, Paragraph A.1 and Paragraph B.

"Testing Commencement Date" shall mean the first date that Pioneer begins testing the systems and operations of the Project which require the use of Effluent. Written notice of the Testing Commencement Date shall be given by Pioneer to the City at least ten (10) days prior to the Testing Commencement Date.

"Testing Period" shall mean the period between the Testing Commencement Date and continuing until the Operations Term Commencement Date.

## ARTICLE II: SUPPLY AND USE OF EFFLUENT

## A. Supply of Effluent.

1. Beginning on the Operations Term Commencement Date, the City agrees to make available, deliver to the Point of Delivery and sell to Pioneer on a constant and continuing basis Effluent at Pioneer's required quantity of flow, with a maximum continuous consumption rate of 688 gallons per minute (990,000 gallons per day) as determined by Pioneer. Pioneer's rights hereunder include the exclusive right to the first 990,000 gallons per day of Effluent produced by the Plant and to the entire portion thereof if the Plant does not produce such maximum flow.
2. Title to and risk of loss of Effluent shall pass to Pioneer at the Point of Delivery.
3. If the City is unable on any day to deliver Effluent to the Point of Delivery meeting Pioneer's needs, up to the maximum amounts specified above, whether due to shortage of Effluent, due to the presence of Non-Conforming Effluent or otherwise, the City shall immediately upon obtaining knowledge thereof notify Pioneer of this shortfall by telephone to the number provided in Article XIV or at such other telephone number as Pioneer may otherwise provide (with prompt written confirmation thereof) of such inability to provide the maximum daily quantity of Effluent. Each shortfall notice shall specify that a shortfall in the delivery of Effluent has occurred or will occur, the amount of such shortfall, the reasons for such shortfall and the anticipated length of such shortfall, including in each case all relevant dates and the steps the City is taking to remedy the shortfall, including, as elected by Pioneer, provision of Potable Water for mixing with Non-Conforming Effluent or as an alternative supply of water in accordance with Article II, Paragraph D and Article IV.
4. Pioneer shall, prior to use, provide further treatment of all effluent sold to it by the City in accordance with the Massachusetts Department of Environmental Protection Class A Reclaimed Water standards (314 CMR 20) and any other treatment standards that may be set forth in the Reclaimed Water Permit issued by the Massachusetts Department of Environmental Protection to Pioneer. Construction of the facility shall not include any bypass line(s) that would allow the flow of effluent to bypass the treatment system and flow directly to the water storage tank and/or cooling towers. All effluent must pass through the water treatment system prior to use. **If at anytime during this agreement, Pioneer violates this provision, the City shall have the right, of not less than 30 days prior, with notice, to suspend its performance under this agreement.**

## B. Quality of Effluent.

The City shall maintain the quality of the Effluent in compliance with the requirements of its NPDES Permit. Any treatment in addition to that required by the NPDES Permit shall be provided by Pioneer at no additional cost to the City. The City shall deliver to Pioneer all data and results of tests on discharges from the Plant obtained in accordance with the NPDES Permit. The City shall notify Pioneer of any proposed and final changes in its NPDES Permit and its other state and federal discharge permits.

## C. Effluent Required for Testing.

The City acknowledges that Pioneer shall require Effluent prior to the Operations Term Commencement Date for testing of the equipment, systems, and test operations of the Project. Beginning on the Testing Commencement Date, the City agrees to deliver to the Point of Delivery such quantities of Effluent as may be required by Pioneer for testing purposes. The quantities of Effluent that are made available daily to Pioneer hereunder prior to the Operations Term Commencement Date shall not be greater than the quantities that shall be made available daily to Pioneer as provided in Article II Paragraph A.1.

## . Special Conditions

1. Non-Conforming Effluent. If for any reason, excepting an event of Force Majeure, the City cannot deliver to the Point of Delivery Effluent meeting the Standards, the City shall make available both Non-conforming Effluent and Potable Water sufficient for mixing by Pioneer such that the Non-conforming Effluent, when diluted with Potable Water will meet the Standards for conforming Effluent. If the City provides Potable Water for this reason then Pioneer shall purchase Potable Water at the Effluent rate in effect at such time. Pioneer's payments under Section Article III include City's fees related to sewer use for this water. City will not allocate or otherwise charge to the account of Pioneer any additional sewer use charges for such water. The City may limit the quantity of or restrict the use of Potable Water for this purpose if necessary to protect the health and safety of the City.

2. Effluent or Non-Conforming Effluent of Insufficient Volume. If the required 990,000 gpd volume of water, whether Effluent or Non-Conforming Effluent, cannot be provided by the City or, if Non-Conforming Effluent is of insufficient quality such that no amount of mixing with Potable Water will cause it to meet the Standards, then the City shall deliver Potable Water to the Project in such amounts as required by Pioneer to make up the shortfall of volume. If the City provides Potable Water for this reason then Pioneer shall purchase Potable Water at the Potable water rate in effect at such time. Pioneer's payments under Section Article III include City's fees related to sewer use for this water. City will not allocate or otherwise charge to the account of Pioneer any additional sewer use charges for such water. The City may limit the quantity of or refuse to provide Potable Water for this use but only to the extent necessary to protect the health and safety of the City or otherwise to comply with applicable law.

3. City Regulations. City represents and warrants that it has taken all necessary steps for the authorization and approval, execution, delivery, and performance of such provisions of this Agreement that may otherwise differ from such City Water and Sewer Use Regulations, including, pursuant to Chapter 83, Section 10 of the General Laws of the Commonwealth of Massachusetts, the City's Sewer Use Regulations, as in effect before the Effective Date and as amended, including Article VIII, Section 7 thereof, and any vote or action required of the Board of Public Works of the Town of Greenfield or other instrumentality of the City. The terms of this agreement shall be binding between the City and Pioneer and shall supersede any Water and Sewer Use regulations inconsistent herewith. Pioneer agrees to abide by all City Water and Sewer Use Regulations not inconsistent with or otherwise not modified by the terms of this agreement, including, without limitation, the requirements of Articles IV and V of the City's Sewer Use Regulations.

4. Title to and risk of loss of Non-Conforming Effluent shall pass to Pioneer at the Point of Delivery.

## ARTICLE III: PURCHASE OF EFFLUENT

A. Compensation. During the Operations Term, Pioneer will pay the City quarterly in arrears for its services (within 30 days of its receipt of an invoice from the City) in connection with operating and maintaining the Pumps and for all Effluent delivered to the Point of Delivery or Potable Water delivered to the Plant pursuant to Article II, Paragraph D.1 & 2 during the prior calendar quarter or portion thereof. The rate for the Effluent and Potable Water delivered to the Plant pursuant to Article II, Paragraph D.1 by the City during the Operations Term shall be charged to Pioneer at the rate of \$1.395 per hundred cubic feet (hcf), as adjusted pursuant to paragraph 2, below. Pioneer may separately meter the Effluent delivered to the Point of Delivery. If at any time during the Operations Term, Pioneer believes City's meters are incorrectly measuring



the amount of Effluent delivered to the Point of Delivery or Potable Water to the Plant, Pioneer may request a test of such meter. The parties agree to meet and confer regarding the accuracy of any meter as and when requested by a party, not more than often than weekly but at least once monthly, and to take jointly such actions as may be necessary to recalibrate or otherwise correct any inaccurate or malfunctioning meter.

B. Adjustments. Beginning on the July 1<sup>st</sup> that occurs soonest after the Operations Term Commencement Date, and on July 1 of every year thereafter during the Term, the price paid by Pioneer to the City for Effluent shall be subject to any changes during the previous 12 months in the Consumer Price Index for all Urban Consumers – Boston-Brockton-Nashua, MA-NH-ME-CT (All Items, published by the U.S. Bureau of Labor Statistics, (“Price Index”) if that percentage increase is between 4% and 6. If the price increase is less than 4%, the price paid by Pioneer shall be increased by 4%; if the price increase is more than 6%, the price shall be increased by 6%. Under no circumstances shall the annual price increase be less than 4% or more than 6%. The first adjustment shall be prorated for the portion of the year after the Operations Term Commencement Date as illustrated by the following two examples:

If the increase in the Price Index for the previous 12 months (July 1 - June 30) equals 1% and if the Operations Term Commencement Date is April 1, then the rate of increase shall be deemed to be 4% for the previous 12 months which will be prorated for three months which equals 1.0%. Therefore, as of July 1<sup>st</sup> the additional payment paid by Pioneer will be \$1.395/hcf x 1.0% or \$1.409/hcf. The basis for the next fiscal year will be \$1.409/hcf.

If the increase in the Price Index for the previous 12 months (July 1 - June 30) equals 7% and if the Operations Term Commencement Date is January 1, then the rate of increase shall be deemed to be 6% for the previous 12 months which will be prorated for six months which equals 3.0%. Therefore as of July 1<sup>st</sup> the additional payment paid by Pioneer will be \$1.395/hcf x 3.0% or \$1.437/hcf. The basis for the next fiscal year will be \$1.437/hcf.

C. Development Period Payments. In consideration for the City's agreement to refrain during the Term of this Agreement from entering into any agreement for the sale of the first 990,000 gallons per day of Effluent that shall have priority over the sale of Effluent or Non-Conforming Effluent to Pioneer as provided in this Agreement, and in further consideration for Effluent that may be requested by Pioneer prior to the Operations Term Commencement Date, Pioneer agrees to pay to the City the sum of twenty thousand (\$20,000) per year for every full year between the date of commencement of construction of the Project (established by issuance of a building permit for the Project) until the Operations Term Commencement Date. This amount shall be payable in equal installments due when other water or wastewater customer payments are due and prorated on a per diem basis to the date of the commencement of construction.

D. Delinquent Payments. Payment of invoice is due thirty (30) days from the date of billing. Any portion of invoice remaining as of the due date will be subject to interest at the rate of 14% per annum from the date of billing (Section 21E, Chap 40, MGL). All unpaid bills will be added as a lien to the real estate tax bill for the property where the service relating to this billing was provided.

#### ARTICLE IV: SUPPLY AND USE OF POTABLE WATER

A. Cross Connection Control. Pioneer will install and maintain a cross connection control device(s) or cross connection control method that meets the requirements of the Reclaimed Water Regulations, 310 CMR 22.22, the Massachusetts Uniform Plumbing Code, 248 CMR 10.00 and the City's Water Use Regulations.

B. Separate Meters. In addition to the meter referred to in Article V, Paragraph D, below, Pioneer shall procure, install and maintain two separate water meters for purposes of measuring its use of Potable Water. One shall be located at the Project for purposes of measuring Potable Water consumed at the Project for domestic use. The second will measure the quantity of Potable Water delivered to the Project in lieu of Effluent for cooling.

C. Pricing of Potable Water. Pioneer shall pay the City the applicable water use fee for Potable Water delivered for domestic uses at the Project. The sewer use rate in effect at the time will be charged on this water. Pioneer shall pay the City as set forth in Article II, Paragraph D.1 & 2 for Potable Water used to compensate for or for mixing with Effluent or Non-Conforming Effluent. Title to and risk of loss of Potable Water shall pass to Pioneer at the curb box closest to the Project.

#### ARTICLE V: CONSTRUCTION, OWNERSHIP, OPERATION AND MAINTENANCE OF PUMPS AND PIPELINE

A. Pumps; Location; Pump Area. Pioneer shall be responsible for obtaining real property interests sufficient in its discretion for the purposes of installing, at Pioneer's cost and expense, the Pumps and associated equipment, including but not limited to pipelines and other facilities as defined in Article I, within the Pump Area and to assure Pioneer of continuing appropriate ingress and egress to and therefrom for the purposes of installing, owning, operating, maintaining, monitoring and repairing the Pumps and to facilitate the transport of Effluent to the Project during the Term of this Agreement. Pioneer shall design, construct, install and own and, subject to Article V, Paragraph C, below, the City agrees to operate and maintain the Pumps.

The location of the Pumps and appurtenances will be designated prior to construction and depicted in a drawing to be made an attachment to this Agreement at such time and shall be subject to the approval of the City Engineer which shall not be unreasonably withheld, conditioned or delayed. The Pump installation shall contain two pumps, one capable of providing the full volume of effluent to Pioneer and a second as a standby. Pioneer shall supply a third pump and motor as a complete spare unit to be stored at the Plant. Said facilities and construction activities shall be coordinated as necessary with City facilities so as not to disrupt Plant operations and processes and shall be constructed in accordance with all applicable governmental restrictions, regulations, ordinances and laws and upon obtaining all necessary permits.

B. Effluent Pumps Power; Back-Up Power. Pioneer will install a separately metered power line to the pumps and appurtenances and will pay for the power used by said Pumps and associated equipment. The City shall allow Pioneer, if feasible, at Pioneer's expense, to tie the Pumps into the Plant's emergency electrical power system for back-up power for the Pumps and related equipment and instrumentation. The City agrees to provide emergency power to the Pumps to the same extent that emergency power is made available to the other facilities at the Plant.

C. City O&M of Pumps. To assure the continued health and safety of the City, the City agrees to perform day-to-day operation and maintenance of the Pumps and to assure they function in a proper and efficient manner. In connection therewith, the City shall provide qualified operation and maintenance personnel meeting all applicable certification requirements to operate the Pumps, each of whom shall be an employee of or contractor to the City. Notwithstanding the foregoing, the City shall not be obligated to expend more than three thousand (\$3,000) in any calendar year in connection with its obligations under this paragraph, which amount shall not include the City's cost of employing or contracting for

personnel. Such \$3,000 amount shall be adjusted for each annual increase in the Price Index in the same manner as set forth in Article III, Paragraph B. Pioneer shall have the right to approve any expenditure by the City in excess of \$3,000, as adjusted, individually or in the aggregate over any calendar year. Pioneer shall be responsible for planning for and undertaking major maintenance on the Pumps and for reimbursing the City for any of its expenses approved by Pioneer in excess of its \$3,000 per calendar year maximum, as adjusted. Notwithstanding any of the foregoing: (x) Pioneer shall own the Pumps and associated equipment, (y) it shall have full and unfettered access to the Pumps at all times and (z) Pioneer reserves the right, but is under no obligation, to perform operations or maintenance of the Pumps if the City is not performing its obligations to Pioneer's reasonable satisfaction. Pioneer agrees to annually pay the City ten thousand (\$10,000) for the routine operation and maintenance of the Pumps. This price shall adjust annually according to the formula set forth in Art III B.

D. Metering. Pioneer shall furnish, install, and pay for the maintenance and calibration of flow metering and recording equipment at the Point of Delivery, subject to the approval of the City Engineer which shall not be unreasonably withheld, conditioned or delayed. Pioneer may keep records of flow based on flow meters located at the Project as a check on measurements taken by the City. City shall make available to Pioneer its data collected from its meters.

E. Pipeline Premises. In connection with the construction of the Pipeline, Pioneer shall secure such rights in real property to the Pipeline Premises as may be necessary for the purposes of constructing, owning, operating, maintaining, monitoring and repairing the Pipeline, including continuing ingress and egress to and from the Pipeline. City agrees to cooperate with Pioneer in its efforts to secure such rights to the Pipeline Premises including, as necessary and feasible, and after any necessary authorizations have been secured, agrees to grant to Pioneer, including Pioneer's agents, affiliates, contractors, and employees, sufficient interests in real property on, under and over the Pipeline Premises, over which the City shall hold or shall otherwise obtain ownership and control or over which it may exercise its jurisdiction, if necessary by act of condemnation or eminent domain pursuant to M.G.L. Chapter 165, Section 4B or such other statute authorizing the exercise of eminent domain as may be applicable, or by grant to Pioneer of one or more licenses, easements, grants of location, or other real property interests acceptable to Pioneer.

The City further agrees to cooperate with Pioneer, to the extent within its jurisdiction and control, in obtaining all other required non-municipal governmental and regulatory permits and approvals necessary for the construction, ownership and operation of the Pipeline.

F. Pipeline. Pioneer shall design, construct, install, own, operate and maintain the Pipeline within the Pipeline Premises. Pioneer agrees to construct and locate the Pipeline in accordance with appropriate state and local standards. During the construction of the Pipeline within any Pipeline Premises owned by the City, Pioneer shall pay for an inspector of the City's choosing to be on site and monitor the work. The inspector shall report to the City Engineer but coordinate with and provide Pioneer copies of any written reports made and a summary of any verbal reports made. At the conclusion of the pipeline work, Pioneer agrees to grind and repave the town owned section of Adams Rd from beyond the Rt2 intersection to Butternut Street. Work will be done in accordance to reasonable Town specifications conforming to prudent construction industry practices. The facilities that are described in this Paragraph are to be constructed with the approval of the City Engineer, said approval shall be timely and not unreasonably withheld, conditioned or delayed. Pioneer shall own the Pipeline and City agrees to grant Pioneer immediate access in the case of any necessary maintenance or improvements.

G. Restoration. Pioneer agrees, within a reasonable amount of time after Pioneer's completion of construction of the Pumps and the Pipeline, to restore the surface of any surface area disturbed by construction to a condition similar to that existing at the time Pioneer commenced its construction activities, except that surface areas of public ways shall be restored to passable conditions as soon as commercially practicable and restored according to the City's applicable published standards and requirements and in conformance with prudent construction industry practices.

H. Discharge into Municipal Sewer.

Pioneer will connect the Project with the City sewer system and is expected to discharge an average of approximately 190,000 gallons per day of spent effluent combined with a limited amount of domestic wastewater, into said municipal sewer system. [Pursuant to Article VIII, Section 7 of the City's Sewer Use Regulations, sewer use fees chargeable to Pioneer for its discharge of spent effluent to the sewer are deemed to be included in its payments under Article III, Section A, as adjusted from time to time.

1. Domestic wastewater. The discharge of domestic wastewater will be charged the sewer use fee in effect at the time. Volume will be calculated from the separate domestic potable water meter.

2. Spent Effluent. The spent effluent will be pretreated before entering the City sewer system and will be in compliance with Articles IV and V of the City's Sewer Use Regulations (the "Sewer Regulations"). Any discharge from Pioneer that

materially interferes with the operation or performance of the city's wastewater treatment plant shall be prohibited as set forth in the City's Sewer Use Regulations. The parties agree that the Project's payments for effluent pursuant to Article III shall include sewer use fees incurred by the Project in connection with its return of spent effluent to the Plant by way of the City sewer system.

I. Connection and Sewer Permits. The City will cooperate with Pioneer in obtaining Sewer Connection and Extension permits as well as the Reclaimed Water Permit from the Massachusetts Department of Environmental Protection and will not unreasonably deny, condition or delay issuance to Pioneer of the City Sewer Connection Permit, the Industrial User's Discharge Permit and any other discharge and/or sewer related permits required by the City to effectuate the terms of this Agreement. If site elevations require that the process and/or domestic wastewater require pumping in order to discharge into the municipal sewer system, the design, construction, maintenance and operation of these sewage pumps shall be the responsibility of Pioneer.

J. Mutual Cooperation. On and after the Testing Commencement Date and during the Operations Term, Pioneer and the City shall cooperate with each other as necessary for the safe and normal operation of the Project, the Plant, the Pumps and the Pipeline and in the event of an emergency, each party agrees to cooperate with the other in order to achieve normal operations. During the Development Term and thereafter as appropriate during the Term, the parties agree to cooperate with one another in undertaking and completing their respective construction, operation and maintenance obligations, and inspection and monitoring rights under this Agreement and the parties shall work with one another to agree upon the appropriate location of the Pumps within the Pump Area and the routes for the Pipeline within the Pipeline Premises as necessary to deliver Effluent to the Project. During the Development Term, and subject to applicable law, the City further agrees to grant all licenses, construction easements, grants of location or other acts, agreements and permits that are needed by Pioneer for such routes with respect to land owned by the City or otherwise. To the extent possible, prior to any material change in the manner in which wastewater is processed by either party, the parties agree to notify one another and cooperate to mitigate any material adverse effect on each other. Without limiting any of the foregoing, During the Development Term and thereafter as appropriate during the Term, the City agrees, to the extent allowed by law, to execute and deliver or to otherwise cooperate with and assist Pioneer in its efforts to obtain the following:

- any Reclaimed Water Permits required of either party for the delivery of Effluent to the Project or Service and Use Agreement under Reclaimed Water Regulations;

- any permit or agreement for personal or real property for the connection and operation of sewer discharge facilities for delivery of wastewater from the Project to the City's municipal sewer system

- any permits, rights of way, access and real and personal property rights for the delivery of Potable Water to the Project

- any and all other assistance required by the Project related to its use and discharge of water, at Pioneer's request and at no out of pocket cost to the City.

For the avoidance of doubt, Pioneer shall reimburse the City for its reasonable out of pocket expenses incurred in connection with its performance of its obligations under this Article V, Section J.

K. Representations. The City represents that it lawfully owns the real and personal property comprising and on which the Plant is constructed; that it owns and operates the Plant; that it has secured all necessary state and federal governmental and regulatory permits to operate the Plant; that it is not now in violation of the terms and conditions of said permits; that during the Term of this Agreement it shall continue, within its control, to maintain and operate said Plant and maintain its permits and secure any new or different permits that may be necessary to continue to use the Plant or any substitute thereof in a manner consistent with the terms and purposes of this Agreement; that it will use its best efforts not to violate the terms and conditions of all such permits; and that its execution, delivery and performance of this Agreement including its obligations with respect to cooperating with Pioneer on other matters hereunder have been duly noticed, authorized and approved of by the appropriate governing persons, office holders or representative bodies of the City and that attached at Schedule 1 is a list of all such required approvals together with true and complete copies thereof.

#### ARTICLE VI: TERM

A. Contract Term. This Agreement shall be binding upon the parties beginning on the Effective Date and shall continue in force for twenty (20) years following the Operations Term Commencement Date. Further, upon a the written request of Pioneer given within the last five (5) years of the Term hereof, the City will begin the approval process necessary to extend the term of this Agreement for a period of either ten (10) or twenty (20) additional years, as requested by Pioneer. In addition, between the Effective Date and the Operations Term Commencement Date, the parties may seek and each agrees to cooperate and make such efforts as may be required in seeking a Special Act of the Legislature to allow for a 30-year term. In the event such Special Act is approved, the parties agree the Operations Term shall be for a period of thirty (30) years and the extension right set forth above shall be for ten (10) years only. For the avoidance of doubt, the Term of this Agreement

shall commence on the Effective Date, shall continue through the Development Period, through the Testing Period and through the Operations Term unless earlier terminated in accordance with its terms.

B. Contract Termination. Notwithstanding any other provision of this Agreement, if the Operations Term Commencement Date does not occur by December 31, 2016, then Pioneer shall have the option of either (a) continuing the Term of this Agreement for an additional three (3) years upon payment to the City the sum of twenty thousand dollars (\$20,000) during each year of the continued term until the Operations Term Commencement Date or (b) of terminating this Agreement upon thirty (30) days advance written notice to the City. In addition, Pioneer may terminate this Agreement at any time upon 90 days advance written.

#### ARTICLE VII: ASSIGNMENT

The parties shall not assign this Agreement without the written consent of the other party which shall not be unreasonably withheld, conditioned or delayed, except that: (a) Pioneer, its successor or permitted assign, may assign this Agreement, without consent, to any lender or other equity or debt financing party, including as collateral for the obligations of Pioneer under any construction or term financing or refinancing, in which case, in order to facilitate the obtaining of financing or refinancing of the Project, the City shall execute such consents, agreements and similar documents, and shall provide such legal opinions, at the expense of Pioneer, its successor or permitted assign, with respect to the assignment or collateral assignment hereof to a lender or other financing party as such lender or financing party may reasonably request; and (b) Pioneer may, upon notice to the City, assign this Agreement in connection with merger, acquisition or purchase of equity in Pioneer, its affiliate or other project company, or to one or more purchasers or other transferees of the Project and / or the personal property comprising and / or the real property on which the Project is located, including any of its rights with respect to and within the Pump Area and the Pipeline Premises, where such assignee, purchaser, or successor entity has experience comparable to Pioneer's in owning, operating or maintaining power generation projects and that has the financial capability to perform its obligations under this Agreement. Upon any such assignment and the assumption by the assignee of all of Pioneer's obligations hereunder arising after the date of the assignment, Pioneer shall automatically be released and discharged from any and all liability and obligations arising out of or relating to this Agreement that arise after the date of such assignment. Pioneer or any future assignee agrees to notify the City as soon as reasonably possible of any change in ownership or operation of the Project. City agrees to use reasonable efforts to provide such documentation as may be required by any such transferee of equity or assets, including any estoppel certificate or other agreement as may be requested.

#### ARTICLE VIII: NON-RECOURSE

The City understands and agrees that Pioneer is a limited liability company and (a) the City shall have no recourse against any member in Pioneer and its sole recourse shall be against Pioneer as an entity and Pioneer's assets irrespective of any failure to comply with applicable law or any provision of this Agreement; (b) no claim shall be made against any member in Pioneer in connection with this Agreement; and (c) The City shall have no right to any claim against Pioneer for any capital contribution from any member in Pioneer.

#### ARTICLE IX: SUCCESSORS AND ASSIGNS

This Agreement shall bind and inure to the benefit of the respective parties and their respective permitted successors and assigns.

#### ARTICLE X: NO CONSEQUENTIAL DAMAGES

In no event shall either party be liable for any loss of profits or incidental, special, exemplary, indirect or consequential damages unless required by a governmental regulation or permit.

#### ARTICLE XI: FURTHER ASSURANCES

The parties shall execute, acknowledge and deliver any and all such further agreements and instruments as the other party may reasonably request from time to time in order to give full effect to this Agreement.

#### ARTICLE XII: MASSACHUSETTS LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

#### ARTICLE XIII: BREACH; REMEDY

A. Right to Cure. If either party shall fail to perform or observe any of the material terms, conditions or provisions of this Agreement, and said failure shall not be rectified or cured within thirty (30) days after receipt of written notice thereof from the non-defaulting party, then the defaulting party shall be deemed in breach of this Agreement and the non-defaulting party shall be entitled to terminate this Agreement upon an additional thirty (30) days written notice and cure period;

provided that, for any failure not rectified within such additional thirty (30) day period for which the defaulting party is then diligently pursuing to remedy such failure or cure such defect or default, such termination right shall not arise with the other party and the defaulting party shall be given an additional thirty (30) day period, or such longer period as may be reasonably required, within which to resume performing its obligations under this Agreement. The right to terminate this Agreement shall be in addition to any and all other rights and remedies available to the non-defaulting party.

B. Parties Obligations During Disputes. If a dispute arises out of or relates to this contract, or the breach thereof, the parties agree to first meet and confer and negotiate with one another for a period of not more than thirty (30) days. During such thirty (30) day period, City agrees to make its personnel available and to attend such meetings and telephone conversations as Pioneer may schedule with advance notice of not less than 24 hours. Pioneer may choose to invite to such other persons as it may choose for purposes of assisting the resolution of such dispute and City agrees to cooperate with such other persons. After such thirty (30) day period, the parties agree to attempt in good faith for an additional period of not more than thirty (30) days to settle the dispute by mediation through a single mediator under the Commercial Mediation Rules of the American Arbitration Association, if feasible, at a location within the City of Greenfield, but otherwise at the regional office nearest to the Project, before resorting to litigation. Pioneer agrees to continue to pay all sums that are not in dispute until the disputed matter is resolved. In the event of any dispute between the parties, the City shall continue to deliver Effluent, and if necessary Potable Water, to the Point of Delivery as provided in this Agreement until the disputed matter is resolved. Notwithstanding anything else in this Article XIII, Paragraph B to the contrary, for any material breach of this agreement that may cause irreparable harm to either party, it is agreed that money damages are inadequate and that the parties may seek injunctive relief.

C. Termination for Failure to Supply Water. Without limiting the right to terminate in accordance with Paragraphs A and B above, Pioneer shall have the right to terminate this Agreement and to pursue its rights and remedies if the City shall for any reason fail to supply Effluent in accordance with Article II, paragraphs A and B, Non-Conforming Effluent or Potable Water in accordance with Article II for any consecutive ten (10) day period or more than thirty (30) days in any twelve month period on five (5) business days advance written notice unless the City shall have demonstrated to Pioneer's satisfaction that any such failure is capable of remedy and will be remedied in a manner that does not result in any adverse effect upon Pioneer. For purposes of this Paragraph C, the occurrence of an event of Force Majeure shall excuse the City's failure to supply water to the extent caused by and for the duration of such event of Force Majeure.

D. Suspension of Performance for Force Majeure. With respect to the excusal of a party's nonperformance or delay in performance under this Agreement due to an event of Force Majeure, such nonperformance shall only be excused: (a) to the extent and for the duration such performance was prevented or delayed by a Force Majeure event; (b) only after written notice by the party claiming a Force Majeure event as soon as reasonably practicable describing the particulars of the event of Force Majeure; (c) so long as the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the event of Force Majeure; (d) so long as the party claiming an event of Force Majeure uses its best efforts to overcome or mitigate the effects of such event; and (e) so long as the party claiming an event of Force Majeure promptly resumes performance and so notifies the other party in writing after such event of Force Majeure no longer prevents or delays such party's performance.

E. Suspension of Performance for use of Construction and Demolition Waste. If at any time during the Term of this Agreement, Pioneer applies for and obtains an amendment of Special Condition #2 of the Conditions of Approval set forth on Pioneer's application for special permit and in the minutes of the 6/29/09 Zoning Board of Appeals meeting, which amendment would authorize the combustion of painted or treated wood or construction demolition materials classified as "solid waste" pursuant to Massachusetts Dept of Environmental Protection (Mass DEP) Regulations, the City shall have the right, on not less than thirty (30) days prior written notice, to suspend its performance under this Agreement. The City may, thereafter, with the consent of its Town Council and Mayor, resume performance on such terms as the parties may agree.

#### ARTICLE XIV: NOTICE; AMENDMENT; SEVERABILITY

A. Notice. Where written notice is required by this Agreement, all notices, certificates or other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage paid, return receipt requested, addressed as follows:

Pioneer:  
Pioneer Renewable Energy, LLC  
Attention: Matthew Wolfe

c/o Madera Energy, Inc.  
89 Thorndike Street  
Cambridge, MA 02142  
Telephone: 617-401-2125  
Facsimile: 617-401-3755  
Email: mwolfe@maderaenergy.com

City of Greenfield:

Mayor of Greenfield  
William F. Martin, Mayor  
Town Hall  
14 Court Square  
Greenfield, MA 01301  
Phone 413-772-1560  
Fax 413-772-1519  
MayorofGreenfield@Greenfield-ma.gov

Dept of Public Works  
Sandra Shields, Director  
Town Hall  
14 Court Square  
Greenfield, MA 01301  
Phone 413-772-1528  
Fax 413-773-9593  
SandraS@Greenfield-ma.gov

Plant Location: 384 Deerfield St, Greenfield, MA  
Mailing:  
Town Hall  
Attn: Cliff Bassett, Supt  
14 Court Square  
Greenfield, MA 01301  
Phone 413-772-1539  
Fax 413-772-1541  
CliffordB@Greenfield-ma.gov

Notice of change of address shall be given in accordance with these provisions.

B. Integration Clause; Amendment. This Agreement constitutes the entire agreement between the City and Pioneer concerning the subject matter hereof and supersedes all prior discussions, representations, promises, commitments, agreements or undertakings with respect thereto. This Agreement may be amended only by a written agreement that is signed by the parties hereto.

C. Severability. The invalidity of any provision of this Agreement shall not affect the validity of any other provision, and the remaining provisions of this Agreement shall continue in full force and effect notwithstanding said invalidity, but only to the extent that it continues to reflect fairly the intent and understanding of the parties expressed by this Agreement taken as a whole.

#### ARTICLE XV: INDEMNIFICATION; INSURANCE

A. Indemnification. Subject to the limitations set forth in Massachusetts General Laws Chapter 258 of which there is no waiver herein intended, and except as otherwise provided herein, each party (referred to in this paragraph as an "Indemnitor") shall indemnify and save harmless the other party against any liability, exposure, loss, damage, penalties or judgments arising from injury to person or property sustained as a result of the negligence or willful misconduct of the Indemnitor or its agents or others subject to its control and each party shall be responsible for any liability, exposure, loss, damage, penalties or judgments arising from injury to person or property sustained as a result of the negligence or willful misconduct caused by its agents or others subject to its control. Notwithstanding the above, Pioneer shall indemnify and hold the City and its successors and assigns, harmless from and against any and all claims, liabilities, exposures, losses, damages,

penalties and/or judgments, including without limitation all attorneys' fees and experts' fees and disbursements, arising from or relating to the planning, development and, provided that the City has not breached the terms of this Agreement, the operation of the Project.

#### B. Insurance Requirements.

1. Pioneer and the City shall each carry workers' compensation insurance in accordance with statutory requirements, including employer's liability coverage in the amount of \$500,000 per occurrence.
2. Pioneer and the City shall each provide coverage against claims for third-party bodily injury including death and third party property damage to the extent of their obligations in Paragraph A of this article.
3. Thirty days prior to Pioneer entering on City owned property for purposes of construction of the Pumps, Pioneer shall provide evidence of sufficient insurance coverage including deductibles in amounts reasonably agreeable to the City.
4. Property Insurance. Pioneer and the City shall each provide coverage for their respective facilities. Coverage may take the form of traditional insurance or self insurance and shall be in amounts reasonably agreeable to each party.
5. Terms of Insurance. All insurance provided in accordance with this Agreement shall be on reasonable and customary terms and conditions as reasonably agreeable to each party.

#### ARTICLE XVII: LEGISLATION

If it is determined that legislation is necessary to carry out the intent of any Article of this Agreement, the parties agree to cooperate with one another in drafting and submitting the legislation at the earliest possible date. This Agreement is not contingent upon the outcome of legislation.

#### ARTICLE XVII: TERMINATION

Pioneer may terminate this agreement for convenience at any time preceding the Operations Term Commencement Date. After the end of the Term of this Agreement and at the request of the City, Pioneer, at its expense, will terminate all connections with the City's systems, including but not limited to cutting and plugging pipelines, alarms and other conduits which directly connect and interface with the City's systems. Upon the date that is five (5) years after the termination without renewal, extension, replacement or assumption of this Agreement and all other agreements between Pioneer and the City with respect to the Project, all of Pioneer's right, title and interest in and to any personal property located on real property owned by the City shall revert to the City. For a period of five (5) years after the date of transfer of title to such personal property, Pioneer shall have the option, within three (3) months of providing written notice to the City, to commence to re-use such personal property on such terms and conditions as may have been in effect prior to such transfer of title. Upon Pioneer's request, the City agrees that it shall negotiate in good faith and use its best efforts to renew, extend, replace or agree to assumption of all agreements between it and Pioneer, on substantially similar terms and conditions as may have been previously in place.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the City and Pioneer have caused this Agreement to be duly executed and delivered by these authorized signatures as of the date first above written.

PIONEER RENEWABLE  
ENERGY, LLC

CITY OF GREENFIELD

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_



Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Richard Kos, Town Attorney

## CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signature of individual submitting bid or proposal \_\_\_\_\_

Name of Business \_\_\_\_\_

## TAX COMPLIANCE CERTIFICATION

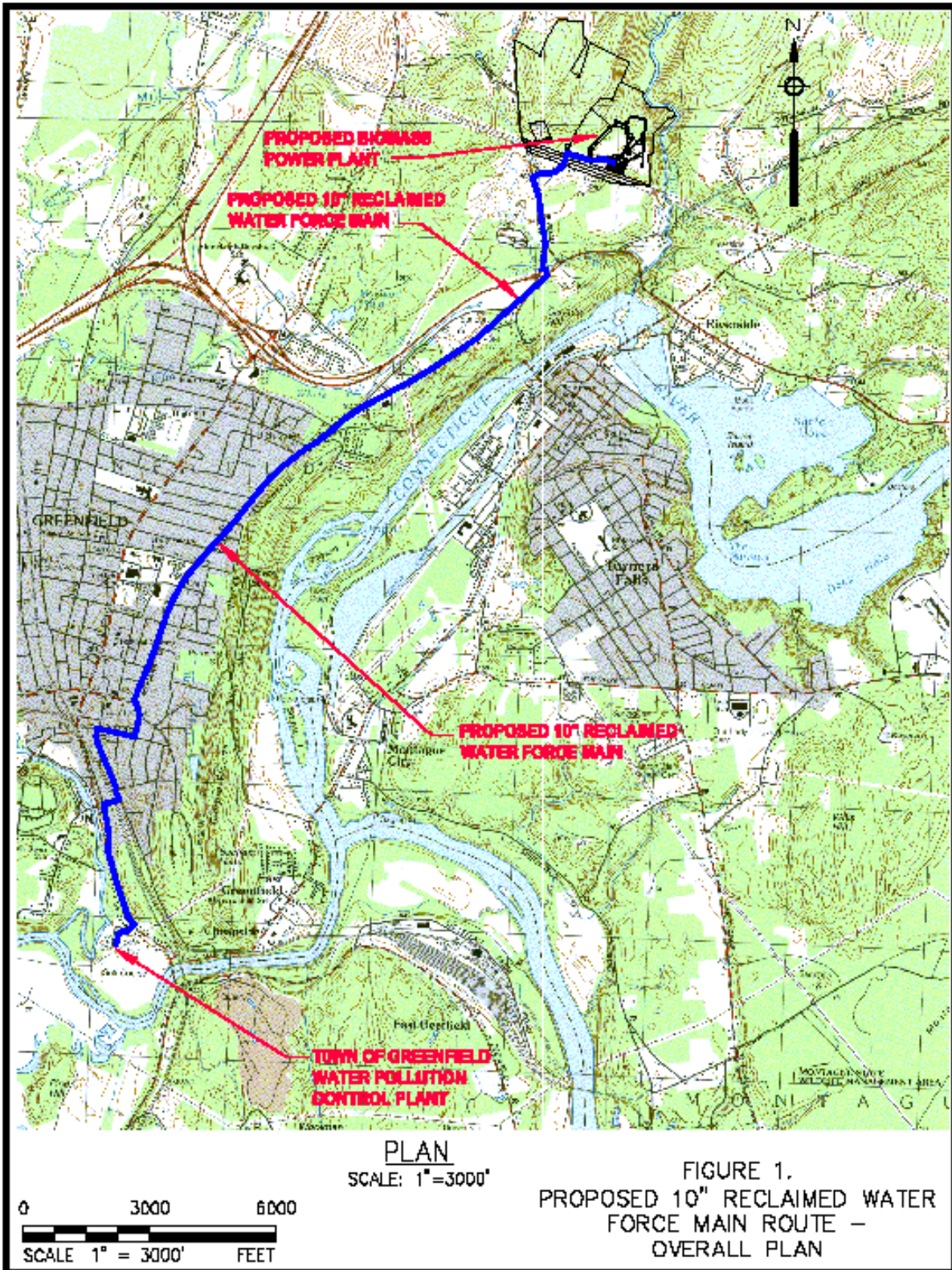
Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

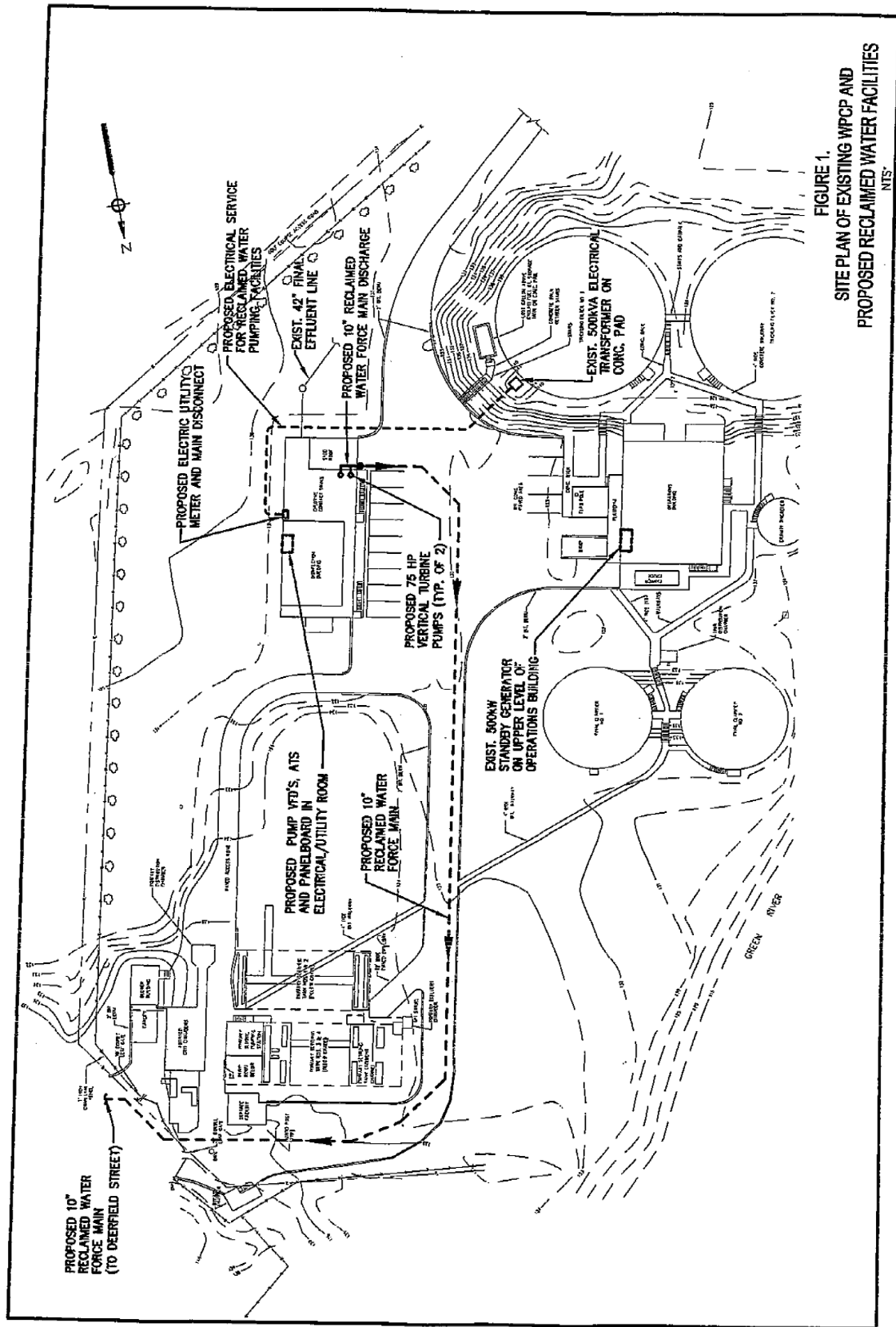
Signature of individual submitting bid or proposal \_\_\_\_\_

\_\_\_\_\_  
Name of business \_\_\_\_\_

Exhibit A  
Pipeline Premises

PATH/FILENAME: P:\60092782-GSN\O\SKETCHES\CEGOW2D1.DWG  
 LAST UPDATE: Friday, March 06, 2008 10:35:13 AM  
 PLOT DATE: Friday, March 06, 2009 11:26:28 AM





PATM/PLM/AHE: P:\60092782-90W\A\SKETCHES\0200W102.DWG  
LAST UPDATE: Wednesday, September 30, 2009 3:16:22 PM  
PLOT DATE: Wednesday, September 30, 2009 3:16:14 PM

[See Attached.]

Schedule 1

City Authorizations and Approvals

[Copies to be attached.]

Evidence of title to Plant's real property

Evidence of vote of city counsel to amend sewer use regulations

Evidence of Town Council's Approval of this Agreement

**Order no. FY 10 -040**

**MOTION:** On a motion by Councilor Guin, second by Councilor Allis, it was,

**MOVED:** THAT IT BE ORDERED THAT THE GREENFIELD TOWN COUNCIL APPROVE A LEASE TO PIONEER RENEWABLE ENERGY, LLC FOR A PERIOD OF TWENTY (20) YEARS UNDER THE TERMS AND CONDITIONS AS WRITTEN IN THE PROPOSED LEASE ATTACHED HERETO AS EXHIBIT A AND AUTHORIZE THE MAYOR TO EXECUTE SAID LEASE.

**DISCUSSION:** Councilors Guin and Maloney stated the Economic Development Committee and Ways and Means Committee forwarded a positive unanimous recommendation to the Town Council for approval.

It was by shoe of hands majority,

**VOTED:** TO APPROVE THE MOTION ORDER NO. FY 10 -040.

11/19/09

**PUMP INSTALLATION SITE LEASE AGREEMENT**

This Pump Installation Site Lease Agreement ("Agreement", or "Lease") is entered into on this [ ] day of [ ], 2009 (the "Effective Date"), by and between the City of Greenfield, Massachusetts, a Massachusetts municipal corporation (the "City") and Pioneer Renewable Energy LLC, a Massachusetts limited liability company ("Pioneer") with offices at 89 Thorndike Street, Cambridge, MA 02141.

WHEREAS, the City owns a wastewater treatment plant (the "Plant") with an average daily flow of 3.4 million gallons per day;

WHEREAS, Pioneer proposes to construct, own and operate a power generating facility in Greenfield, Massachusetts (the "Project");

WHEREAS, the City has proposed to lease to Pioneer real property rights to which may be secured by Pioneer for its construction, ownership, operation, access to and from and maintenance of the Pumps ("Pump Area") for use in connection with the Project;

**ARTICLE I: DEFINITIONS**

**"Agreement"** shall mean this Pump Installation Site Lease Agreement (also referred to as "Lease").

**"Development Period"** shall mean the period between the Effective Date and the Testing Commencement Date.

**"Effective Date"** shall have the meaning given to it in the preamble to this Agreement.

**"Effluent"** shall mean the wastewater which has been secondarily treated by the City at the Plant and which meets standards set forth in the City's NPDES permit.

**"Force Majeure"** shall mean an event beyond the reasonable control of and not attributable to the negligence or willful misconduct of the party affected that prevents or delays such party's performance of its obligations under this Agreement, including but not limited to the following: flood; earthquake; storm; drought; lightning; fire; explosion; war; riot; civil disturbance; strike;

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sabotage; or electrical outage; provided, however, that Force Majeure shall not include any equipment failure due to neglected maintenance or repair.

"Lease Payment" shall mean the cost of the Lease to Pioneer by the City as determined in accordance with Article II, Paragraph A, as adjusted annually in accordance with Article II, Paragraph, B.

"Operations Term" shall mean the twenty (20) year period beginning on the Operations Term Commencement Date, as the same may be extended pursuant to Article V, Paragraph A.

"Operations Term Commencement Date" shall mean the first date of commercial operation of the Project, as identified in a written notice given by Pioneer to the City at least ten (10) days prior to the Operations Term Commencement Date.

"Plant" shall mean the wastewater treatment plant facilities owned by the City and located at 384 Deerfield St Greenfield, Massachusetts.

"Project" shall mean the Pioneer power generating facility to be constructed, owned and operated by Pioneer within the City on Butternut Road, Greenfield, Massachusetts.

"Pump Area" shall mean the portion of the Plant described in Exhibit A attached hereto. Also referred to as "Pump Installation Lease Area".

"Pumps" shall mean all facilities and equipment located within the Pump Area, from time to time, including but not limited to pumps, motors, meters, pipes, and appropriate interconnections that are reasonable and necessary to facilitate the transport of Effluent from the Plant to the Project. The initial Pumps to be installed by Pioneer are to be based upon a conceptual design by AECOM Water, formerly Metcalf & Eddy.

"Term of this Agreement" shall mean collectively, the Development Period, the Testing Period and the Operations Term.

"Testing Commencement Date" shall mean the first date that Pioneer begins testing the systems and operations of the Project which require the use of Effluent. Written notice of the Testing Commencement Date shall be given by Pioneer to the City at least ten (10) days prior to the Testing Commencement Date.

"Testing Period" shall mean the period between the Testing Commencement Date and continuing until the Operations Term Commencement Date.



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**ARTICLE II: PAYMENTS**

- A. **Rent.** During the Operations Term, rent for the Pump Area shall be \$10,000 per year, subject to adjustment as described in paragraph B (the "Rent"). Pioneer will pay the City the Rent in equal quarterly in arrears (within 30 days of its receipt of an invoice from the City). Rent shall be prorated for any partial quarter during the Operation Term.
- B. **Adjustments.** Beginning on the July 1<sup>st</sup> that occurs soonest after the Operations Term Commencement Date, and on July 1 of every year thereafter during the Term, the Rent shall be increased by the change during the previous 12 months in the Consumer Price Index for all Urban Consumers – Boston-Brockton-Nashua, MA-NH-ME-CT (All Items, published by the U.S. Bureau of Labor Statistics, ("Price Index") if that percentage increase is between 4% and 6. If the percentage increase is less than 4%, the Rent shall be increased by 4%; if the percentage increase is more than 6%, the Rent shall be increased by 6%. Under no circumstances shall the annual Rent increase be less than 4% or more than 6%. The first adjustment shall be prorated for the portion of the year after the Operations Term Commencement Date. In the event that the U.S. Bureau of Labor Statistics shall cease to publish the Price Index, the City and Pioneer shall work cooperatively to identify a new index reasonably similar to the Price Index to replace the Price Index.
- C. **Delinquent Payments.** Payment of invoice is due thirty (30) days from the date of receipt of billing by Pioneer. Any portion of invoice remaining as of the due date will be subject to interest at the rate of 14% per annum from the date of billing (Section 21E, Chap 40, MGL). All unpaid bills will be added as a lien to the real estate tax bill for the Project.

**ARTICLE III: CONSTRUCTION, OWNERSHIP, OPERATION AND MAINTENANCE OF PUMPS**

- A. **Pumps; Location; Pump Area.** The City hereby leases to Pioneer, and Pioneer hereby leases from the City, the Pump Area for the Term of this Agreement. The Pump Area shall include the appurtenant right to other areas of the Plant necessary to assure Pioneer of continuous ingress and egress to and from the Pump Area for the purposes of installing, owning, operating, maintaining, monitoring, repairing and replacing the Pumps during the Term of this Agreement. Pioneer shall design, construct, install and own the pumps, Subject to Article III Paragraph C below, the City agrees to operate and maintain the Pumps.

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The location of the Pumps within the Pump Area will be designated by Pioneer prior to construction and depicted in a drawing to be made an attachment to this Agreement at such time and shall be subject to the approval of the City Engineer which shall not be unreasonably withheld, conditioned or delayed. The Pump installation shall contain two pumps, one capable of providing the full volume of Effluent to Pioneer and a second as a standby. Pioneer shall supply a third pump and motor as a complete spare unit to be stored at the Plant. Said facilities and construction activities shall be coordinated as necessary with the City so as not to disrupt Plant operations and processes and shall be constructed in accordance with all applicable governmental restrictions, regulations, ordinances and laws and after obtaining all necessary permits.

The City agrees that the Pumps shall at all times be and remain the personal property of Pioneer and shall never be deemed a fixture notwithstanding that the Pumps may be affixed to the real estate. The City disclaims any interest in the Pumps. Pioneer reserves the right to remove the Pumps at any time.

B. Effluent Pumps Power; Back-Up Power. Pioneer will install a separately metered power line to the Pumps and will pay for the power used by said. The City shall allow Pioneer, if feasible, at Pioneer's expense, to tie the Pumps into the Plant's emergency electrical power system for back-up power for the Pumps, in which event, the City agrees to provide emergency power to the Pumps to the same extent that emergency power is made available to the other facilities at the Plant. If it is not feasible to tie into the Plant's emergency power system, Pioneer shall be permitted to install its own emergency back-up electrical power system for the Pumps.

C. City O&M of Pumps. In furtherance of the continued health and safety of the City, the City agrees to perform day-to-day operations and maintenance of the Pumps to assure they function in a proper and efficient manner. In connection therewith, the City shall provide qualified operations and maintenance personnel meeting all applicable certification requirements to operate the Pumps, each of whom shall be an employee of, or contractor to, the City. Notwithstanding the foregoing, the City shall not be obligated to expend from City funds more than three thousand (\$3,000) in any calendar year in connection with its obligations under this paragraph, which amount shall not include the City's cost of employing or contracting for personnel. Such \$3,000 amount shall be adjusted for each annual increase in the Price Index in the same manner as set forth in Article II, Paragraph B. Pioneer shall have the right to approve any expenditure by the City in excess of \$3,000, as adjusted, individually or in the aggregate over any calendar year. Pioneer shall be responsible for planning for and undertaking major maintenance on the Pumps and for reimbursing the City for any of its



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expenses approved by Pioneer in excess of its \$3,000 per calendar year maximum, as adjusted. Notwithstanding any of the foregoing: (x) Pioneer shall own the Pumps, (y) Pioneer shall have full and unfettered access to the Pumps at all times, and (z) Pioneer reserves the right, but is under no obligation, to perform operations or maintenance of the Pumps if the City is not performing its obligations to Pioneer's reasonable satisfaction. As detailed in a separate Wastewater Supply Agreement between the City and Pioneer, Pioneer has agreed to annually pay the City ten thousand (\$10,000) for the routine operation and maintenance of the Pumps, which price shall adjust annually according to a formula mirroring that set forth in Article II B, all as more particularly set forth in the Wastewater Supply Agreement.

#### **ARTICLE IV: REPRESENTATIONS; QUIET ENJOYMENT**

The City represents that it lawfully owns the real and personal property comprising and on which the Plant is constructed; that it owns and operates the Plant; that it has secured all necessary state and federal governmental and regulatory permits to operate the Plant; that it is not now in violation of the terms and conditions of said permits; that during the Term of this Agreement it shall continue, within its control, to maintain and operate said Plant and maintain its permits and secure any new or different permits that may be necessary to continue to use the Plant or any substitute thereof in a manner consistent with the terms and purposes of this Agreement; that it will use its best efforts not to violate the terms and conditions of any such permits; and that its execution, delivery and performance of this Agreement, including its obligations with respect to cooperating with Pioneer on other matters hereunder, have been duly noticed, authorized and approved of by the appropriate governing persons, office holders or representative bodies of the City.

The City covenants and agrees that Pioneer, provided that it remains in compliance with its obligations under this Agreement, shall lawfully and quietly have, hold, occupy and enjoy the Pump Area and the appurtenant rights thereto in accordance with the terms hereof throughout the Term of this Agreement free from any claim of any person or entity of superior title thereto without hindrance to, interference with or molestation of Pioneer's use and enjoyment thereof.

#### **ARTICLE V: TERM**

A. **Term of this Agreement.** This Agreement shall be binding upon the parties beginning on the Effective Date and shall continue in force for twenty (20) years following the Operations

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Term Commencement Date. Further, upon the written request of Pioneer, Pioneer will have the right to extend the Operations Term for three (3) consecutive periods of five (5) years each. To exercise any such right, Pioneer shall give the City written notice no later than ninety (90) days prior to the expiration of the then current Term of this Agreement. All of the terms and conditions of this Agreement shall be applicable during any such extension except that Pioneer shall have no further right to extend the Term of this Agreement beyond the third such 5-year extension period. Notwithstanding the foregoing, in the event that the City and Pioneer agree to extend the term of the Water Supply Agreement beyond the expiration of the Term of this Agreement, the parties shall also agree to concurrent extensions of the Term of this Agreement so that the terms of this Agreement and the Water Supply Agreement shall be co-terminus.

B. Contract Termination. Notwithstanding any other provision of this Agreement, if the Operations Term Commencement Date does not occur by December 31, 2016, then Pioneer shall have the option of either (a) continuing the Term of this Agreement for an additional three (3) years until the Operations Term Commencement Date with advance written notice to the City or (b) of terminating this Agreement upon thirty (30) days advance written notice to the City. In addition, Pioneer may terminate this Agreement at any time upon ninety (90) days advance written notice to the City.

#### **ARTICLE VI: ASSIGNMENT**

The parties shall not assign this Agreement without the written consent of the other party which shall not be unreasonably withheld, conditioned or delayed, except that:

(a) Pioneer, its successor or permitted assign, may assign this Agreement (absolutely or collaterally) or grant a leasehold mortgage on the Pump Area or security interests in the Pumps, all without consent of the City, to any lender or other equity or debt financing party (each, a "Lender"), including as collateral for the obligations of Pioneer under any construction or term financing or refinancing, in which case, in order to facilitate the obtaining of financing or refinancing of the Project, the City shall execute such consents, agreements and similar documents, and shall provide such legal opinions, at the expense of Pioneer, its successor or permitted assign, with respect to the assignment, collateral assignment, mortgage or grant of security interests hereof to a Lender as such Lender may reasonably request. The City agrees to make such reasonable modifications to this Agreement as may be necessary in the reasonable opinion of a Lender to finance the Project, provided, that, such modifications do not increase the City's obligations or decrease the City's rights hereunder; and

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(b) Pioneer may, upon notice to the City, assign this Agreement in connection with the merger, acquisition or purchase of equity in Pioneer or the assets of Pioneer, its affiliate or other project company, or to one or more purchasers or other transferees of the Project and / or the personal property comprising and / or the real property on which the Project is located, including any of its rights with respect to and within the Pump Area, where such assignee, purchaser, or successor entity has experience comparable to Pioneer's in owning, operating or maintaining power generation projects and that has the financial capability to perform its obligations under this Agreement. Upon any such assignment and the assumption by the assignee of all of Pioneer's obligations hereunder arising after the date of the assignment, Pioneer shall automatically be released and discharged from any and all liability and obligations arising out of or relating to this Agreement that arise after the date of such assignment. Pioneer or any future assignee agrees to notify the City as soon as reasonably possible of any change in ownership or operation of the Project. City agrees to use reasonable efforts to provide such documentation as may be required by any such Lender or transferee of equity or assets, including any estoppel certificate or other agreement as may be requested.

#### **ARTICLE VII: NON-RECOURSE**

The City understands and agrees that Pioneer is a limited liability company and (a) the City shall have no recourse against any member in Pioneer and its sole recourse shall be against Pioneer as an entity and Pioneer's assets irrespective of any failure to comply with applicable law or any provision of this Agreement; (b) the City shall make no claim against any member in Pioneer in connection with this Agreement; and (c) the City shall have no right to any claim against Pioneer for any capital contribution from any member in Pioneer.

#### **ARTICLE VIII: SUCCESSORS AND ASSIGNS**

This Agreement shall bind and inure to the benefit of the respective parties and their respective successors and permitted assigns.

#### **ARTICLE IX: NO CONSEQUENTIAL DAMAGES**

In no event shall either party be liable for any loss of profits or incidental, special, exemplary, indirect or consequential damages unless required by a governmental regulation or permit.

#### **ARTICLE X: FURTHER ASSURANCES**

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The parties shall execute, acknowledge and deliver any and all such further agreements and instruments as the other party may reasonably request from time to time in order to give full effect to this Agreement.

**ARTICLE XI: MASSACHUSETTS LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

**ARTICLE XII: BREACH; REMEDY**

A. Right to Cure. If either party shall fail to perform or observe any of the material terms, conditions or provisions of this Agreement, and said failure shall not be rectified or cured within thirty (30) days after receipt of written notice thereof from the non-defaulting party, then the defaulting party shall be deemed in breach of this Agreement and the non-defaulting party shall be entitled to terminate this Agreement upon an additional thirty (30) days written notice to the defaulting party, ; provided that, if the defaulting party rectifies or cures the default within such additional thirty day period, the notice of termination shall be null and void and this Agreement shall continue in full force and effect; provided, further, for any failure not rectified within such additional thirty (30) day period for which the defaulting party is then diligently pursuing to remedy such failure or cure such defect or default, such termination right shall not arise with the non-defaulting party, and the defaulting party shall be given such additional time as may be reasonably required within which to rectify or cure such failure and resume performing its obligations under this Agreement. The right to terminate this Agreement shall be in addition to any and all other rights and remedies available to the non-defaulting party. Notwithstanding the foregoing, the City shall have no right to terminate this Agreement with respect to a failure which is not reasonably cable of being rectified or cured, and the City's remedies in such event shall be limited to monetary damages and other equitable relief. Furthermore, in the event that the City has been given written notice of the existence of one or more Lenders, the City shall also send the Lender copies of notices given Pioneer under this paragraph, and shall give such Lender a reasonable opportunity to rectify or cure the failure (which shall include such time as Lender may require to foreclose its leasehold mortgage or security interest if deemed necessary by such Lender. The City agrees, upon the request of a Lender, to enter into a new lease with such Lender, or any designee of Lender, upon the same terms and conditions of this Agreement (or such other terms and conditions as the City and the Lender may agree.

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B. Parties Obligations During Disputes. If a dispute arises out of or relates to this contract, or the breach thereof, the parties agree to first meet and confer and negotiate with one another for a period of not more than thirty (30) days. During such thirty (30) day period, the City agrees to make its personnel available and to attend such meetings and telephone conversations as Pioneer may schedule with advance notice of not less than 24 hours. Pioneer may choose to invite to such other persons as it may choose for purposes of assisting the resolution of such dispute and the City agrees to cooperate with such other persons. After such thirty (30) day period, the parties agree to attempt in good faith for an additional period of not more than thirty (30) days to settle the dispute by mediation through a single mediator under the Commercial Mediation Rules of the American Arbitration Association, if feasible, at a location within the City of Greenfield, but otherwise at the regional office nearest to the Project, before resorting to litigation. If the dispute involves the payment of any sum, Pioneer agrees to continue to pay all sums that are not in dispute until the disputed matter is resolved. Notwithstanding anything else in this Article XII, Paragraph B to the contrary, for any material breach of this agreement that may cause irreparable harm to either party, it is agreed that money damages are inadequate and that the parties may seek injunctive relief.

C. Suspension of Performance for Force Majeure. With respect to the excusal of a party's nonperformance or delay in performance under this Agreement due to an event of Force Majeure, such nonperformance shall only be excused: (a) to the extent and for the duration such performance was prevented or delayed by a Force Majeure event; (b) only after written notice by the party claiming a Force Majeure event as soon as reasonably practicable describing the particulars of the event of Force Majeure; (c) so long as the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the event of Force Majeure; (d) so long as the party claiming an event of Force Majeure uses its best efforts to overcome or mitigate the effects of such event; and (e) so long as the party claiming an event of Force Majeure promptly resumes performance and so notifies the other party in writing after such event of Force Majeure no longer prevents or delays such party's performance.

#### **ARTICLE XIII: NOTICE; AMENDMENT; SEVERABILITY**

A. Notice. Where written notice is required by this Agreement, all notices, certificates or other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage paid, return receipt requested, addressed as follows:

Pioneer:  
Pioneer Renewable Energy, LLC

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Attention: Matthew Wolfe  
c/o Madera Energy, Inc.  
89 Thorndike Street  
Cambridge, MA 02142  
Telephone: 617-401-2125  
Facsimile: 617-401-3755  
Email: mwolfe@maderaenergy.com

City of Greenfield:  
Mayor of Greenfield  
William F. Martin, Mayor  
Town Hall  
14 Court Square  
Greenfield, MA 01301  
Phone 413-772-1560  
Fax 413-772-1519  
MayorofGreenfield@Greenfield-ma.gov

Notice of change of address shall be given in accordance with these provisions.

B. Integration Clause; Amendment. This Agreement constitutes the entire agreement between the City and Pioneer concerning the subject matter hereof and supersedes all prior discussions, representations, promises, commitments, agreements or undertakings with respect thereto. This Agreement may be amended only by a written agreement that is signed by the parties hereto.

C. Severability. The invalidity of any provision of this Agreement shall not affect the validity of any other provision, and the remaining provisions of this Agreement shall continue in full force and effect notwithstanding said invalidity, but only to the extent that it continues to reflect fairly the intent and understanding of the parties expressed by this Agreement taken as a whole.

#### **ARTICLE XV: INDEMNIFICATION; INSURANCE**

A. Indemnification. Subject to the limitations set forth in Massachusetts General Laws Chapter 258 of which there is no waiver herein intended, and except as otherwise provided herein, each party (referred to in this paragraph as an "Indemnitor") shall indemnify and save harmless the other party against any liability, exposure, loss, damage, penalties or judgments

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arising from injury to person or property sustained as a result of the negligence or willful misconduct of the Indemnitor or its agents or others subject to its control and each party shall be responsible for any liability, exposure, loss, damage, penalties or judgments arising from injury to person or property sustained as a result of the negligence or willful misconduct caused by its agents or others subject to its control. Notwithstanding the above, Pioneer shall indemnify and hold the City and its successors and assigns, harmless from and against any and all claims, liabilities, exposures, losses, damages, penalties and/or judgments, including without limitation all attorneys' fees and experts' fees and disbursements, arising from or relating to the planning, development and, provided that the City has not breached the terms of this Agreement, the operation of the Project.

**B. Insurance Requirements.**

1. Pioneer and the City shall each carry workers' compensation insurance in accordance with statutory requirements, including employer's liability coverage in the amount of \$500,000 per occurrence.
2. Pioneer and the City shall each provide coverage against claims for third-party bodily injury including death and third party property damage to the extent of their obligations in Paragraph A of this article.
3. Thirty days prior to Pioneer entering on City owned property for purposes of installation of the Pumps, Pioneer shall provide evidence of sufficient insurance coverage including deductibles in amounts reasonably agreeable to the City.
4. Property Insurance. Pioneer and the City shall each provide coverage for their respective facilities. Coverage may take the form of traditional insurance or self insurance and shall be in amounts reasonably agreeable to each party.
5. Terms of Insurance. All insurance provided in accordance with this Agreement shall be on reasonable and customary terms and conditions as reasonably agreeable to each party.

**ARTICLE XVI: LEGISLATION**

If it is determined that legislation is necessary to carry out the intent of any Article of this Agreement, the parties agree to cooperate with one another in drafting and submitting the legislation at the earliest possible date. This Agreement is not contingent upon the outcome of legislation.

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**ARTICLE XVII: TERMINATION**

Pioneer may terminate this Agreement for convenience at any time preceding the Operations Term Commencement Date. After the end of the Term of this Agreement (as the same may have been extended) or earlier termination of this Agreement, and at the request of the City, Pioneer, at its expense, will remove the Pumps from the Plant and terminate all connections with the City's systems, including but not limited to cutting and plugging pipelines, alarms and other conduits which directly connect and interface with the City's systems. Upon the date that is five (5) years after the termination without renewal, extension, replacement or assumption of this Agreement and all other agreements between Pioneer and the City with respect to the Project, all of Pioneer's right, title and interest in and to any personal property located on real property owned by the City shall revert to the City. For a period of five (5) years after the date of transfer of title to such personal property, Pioneer shall have the option, within three (3) months of providing written notice to the City, to commence to re-use such personal property on such terms and conditions as may have been in effect prior to such transfer of title. Upon Pioneer's request, the City agrees that it shall negotiate in good faith and use its best efforts to renew, extend, replace or agree to assumption of all agreements between it and Pioneer, on substantially similar terms and conditions as may have been previously in place.

**ARTICLE XVIII: NOTICE OF LEASE**

It is agreed that neither the City nor Pioneer, nor any successor or assignee of either of them, may record this Agreement; provided, however, either party shall, upon the request of the other, execute, acknowledge and record a notice of this Agreement pursuant to Massachusetts General Laws, Chapter 183, Section 4.

IN WITNESS WHEREOF, the City and Pioneer have caused this Agreement to be duly executed and delivered by these authorized signatures as of the date first above written.

PIONEER RENEWABLE  
ENERGY, LLC

CITY OF GREENFIELD

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_



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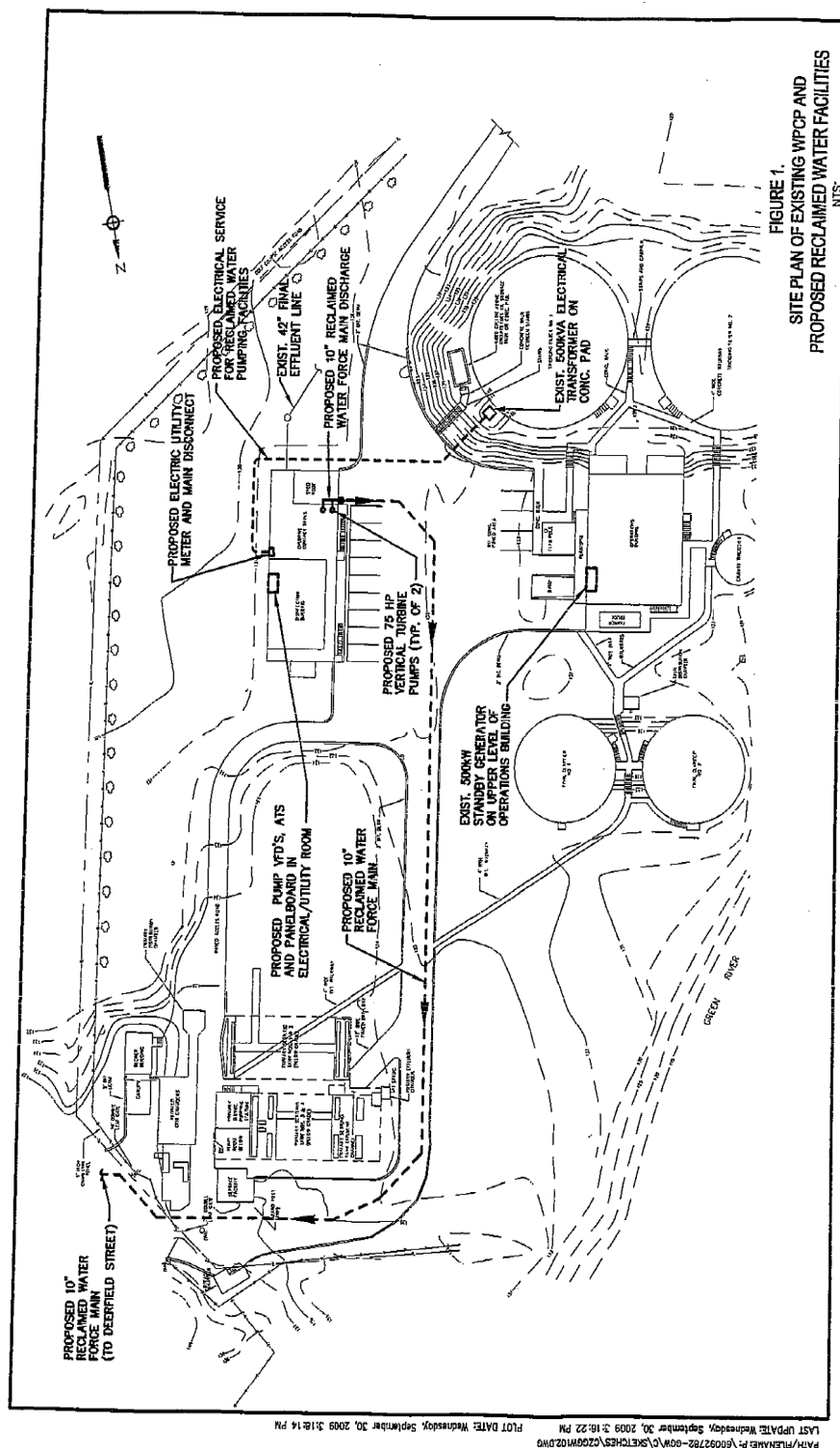
Title: \_\_\_\_\_

Title: \_\_\_\_\_

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EXHIBIT A

Pump Area (also referred to as Pump Installation Lease Area)



**PRESENTATION OF PETITIONS AND SIMILAR PAPERS** none.**REPORTS OF COMMITTEES** none.**UNFINISHED BUSINESS:** None.**OLD BUSINESS:** None.**NEW BUSINESS:****Order no. FY 10 -043****MOTION:** On a motion by Councilor Guin, second by Councilor Allis, it was unanimously,**VOTED:** THAT THE TOWN COUNCIL OF GREENFIELD HEREBY INITIATES AND FORWARDS THE ZONING AMENDMENT PROPOSAL ATTACHED HERETO AS EXHIBIT A, TO THE ECONOMIC DEVELOPMENT COMMITTEE AND PLANNING BOARD FOR CONSIDERATION AND RECOMMENDATION IN ACCORDANCE WITH M.G.L.C 40A SECTION 5.**MOTIONS FOR RECONSIDERATION:** None.**PUBLIC FORUM:** The following members of the public spoke:

- Patrick Devlin, 921 Bernardston Road –member of the Concerned Citizens for Franklin County voiced opposition to the votes taken this evening.
- Sandy Kosterman – opposed the contracts the Town Council authorized the Mayor to enter into.
- Janet Sinclair – read the letter attached.
- Dr. Tom Nelson – reviewed portions of the attached letter referencing the Massachusetts Medical Society.
- A woman whose name was inaudible questioned how the community would get to show what the wishes were for the community as a whole?
- Mike Sachse, 91 Smith St- spoke against the use of wastewater.
- Glen Airs – questioned why the Greenfield Board of Health had no input on the use of wastewater?
- Beth Adams – spoke in opposition of the votes taken tonight and the Biomass Plant.

**ADJOURNMENT:** On a motion by Councilor Farrell, second by Councilor Allis, it was unanimously**VOTED:** TO ADJOURN THE MEETING AT 10:44 P.M.

A true copy,

Attest: \_\_\_\_\_  
Maureen T. Winseck, Town Clerk**GREENFIELD TOWN COUNCIL MEMBERS**Greenfield Middle School Auditorium  
Special Meeting  
December 9, 2009

1. Wood, Peter	P						
2. McLellan, Thomas	P						
3. Allis, Brickett	P						
4. Maloney, Mark	P						
5. Singer, David	P						
6. Letourneau, Danielle	P						
7. Canteen, Jeanne	A						
8. Joseph, Christopher	P						
9. Sullivan, Mary-Catherine	P						
10. Farrell, Timothy	P						
11. Guin, Daniel	P						
12. Siano, Alfred	P						
13. Sutphin, Tracey	P						

